

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: James R. Helmer
Joseph Horwedel

SUBJECT: ILLEGAL TREE REMOVAL

DATE: 05-15-06

Approved

Date

5/16/06

Council District: Citywide

RECOMMENDATION

- (a) Approval of an ordinance amending Sections 13.28.140 and 13.32.140 of Chapters 13.28 and 13.32 of Title 13 of the San José Municipal Code to increase the posting period for potential street tree removals from seven (7) to fourteen (14) days and to increase the potential maximum civil penalty for removal or destruction of heritage trees within a three year period from \$5,000 to \$30,000; and
- (b) Adoption of a resolution amending the Administrative Citation Schedule of Fines to increase the administrative fines for illegal removal of trees in San José as outlined in this report, and repealing Resolution No. 73004, to be effective July 7, 2006.

OUTCOME

The recommendations in this report reflect and assimilate many of the specific interests of the community as they relate to the urban forest and the broader needs and priorities of the public, our neighborhoods, and the City. Approval of the recommendation should provide increased deterrence to the illegal removal of trees and additional opportunity for public input on requested tree removals, thus helping to maintain a healthy urban forest and positively contributing to the attractiveness and livability of our community.

EXECUTIVE SUMMARY

In response to the Rules Committee referral of October 3, 2005, and in an effort to reduce the illegal removal of trees in San José, staff recommends increasing the fines for illegal tree removals and increasing efforts to enforce the removal prohibition against tree service companies or persons who perform illegal tree removal work. Staff also recommends that the posting period for tree removals be increased from seven days to fourteen days. Finally, staff recommends using the incremental

increase in fine revenues to fund technology-driven improvements for the Arborist Office and additional partnering with Our City Forest to increase outreach and public education efforts.

BACKGROUND

On October 3, 2005, Councilmember Ken Yeager submitted a recommendation to the Rules Committee recommending that staff be directed to work on proposals for increased administrative fines and mitigation levels for illegal tree removals throughout the City, and to bring these recommendations back to the full City Council for consideration. At the direction of the Rules Committee, staff performed a review of tree removal cases and data to assess potential trends and reasons for illegal tree removals. In addition, staff gathered data from other local jurisdictions regarding their tree removal policies and associated fines, and has met with the community and other stakeholders to gather input and gauge community support for different measures to deter illegal tree removals.

ANALYSIS

Current Tree Removal Procedures and Fines for Illegal Tree Removals

Public (Street) Trees

Section 13.28.130 of the Municipal Code prohibits any person, including property owners and tree removal contractors, from removing any street tree taller than six feet that exists in the public right of way, unless a permit for the removal has been issued by the Department of Transportation (DOT). The Municipal Code further provides that DOT can issue a street tree removal permit at no charge, after a seven-day posting on the tree intended to be removed. DOT staff performs inspections to ensure that the tree meets the requirements for removal and that any requirements for a replacement tree are followed. The administrative fine for violating Section 13.28.130 regarding the illegal removal of a street tree varies from \$300 to \$500, depending on the size of the trunk diameter of the tree. The administrative fine for illegal removal of a Heritage Tree is set at \$5,000. The civil penalty for illegal removal of a City Council designated Heritage Tree is set at \$5,000 under Municipal Code Sections 13.32.140 and 13.38.340.

Private Trees

For single family and two family residences, a Tree Removal Permit is required for the removal of any tree on private property which has a trunk circumference (measured two feet above grade) of 56 inches or greater (approximately 18" in diameter). There is no fee for this permit if the tree is already dead; however, if the tree is living a public hearing will be required and a public noticing fee is assessed by Planning Building and Code Enforcement (PBCE). For multi-family residences and commercial and industrial properties, a Tree Removal Permit is required for removal of trees of any size, though no public hearing is required if the tree measures less than 56 inches in

circumference; and for trees larger than 56 inches in circumference, a public hearing is required and a public noticing fee is assessed by PBCE.

Effective September 4, 2001, the fine for the illegal removal of private trees was set at \$500 in Resolution No. 70600. In addition to the administrative fine, the property owner/responsible party may still be required to obtain a Tree Removal Permit from the Planning Division and be required to plant one or more replacement trees to mitigate the removal of a tree.

Review of Illegal Tree Removal Cases, Data, and Practices

In FY 2004-05, the Department of Transportation (DOT) issued 65 citations for the illegal removal of trees from an approximate street tree population of 340,000 trees. PBCE received 23 complaints alleging the unpermitted removal of trees from private property, resulting in the issuance of 4 citations. It was found that small tree service companies, contractors, unlicensed workers, or property owners performed most of these illegal tree removals. Many of the property owners who were cited claimed that they were not aware of the requirement of a permit or a review process. Staff has determined that many property owners are relying upon the tree removal companies to secure necessary permits, which is not always a good assumption unless they are using a larger or more established local tree service company. All of the larger and more established local tree service companies are aware of the permit requirements and were not, to our knowledge, involved in any of the documented illegal tree removals.

Staff from DOT and PBCE contacted eight California cities regarding their tree removal process (see Attachment 1). There is not a consistent approach among the cities surveyed for issuing permits for removal of private trees; however, all cities except one require permits for removal of public street trees. Fines for illegal tree removals vary from a high of up to \$25,000 (Sunnyvale – although never fully imposed according to their official) to a low of \$300 (San José and Palo Alto). San José has not adjusted the amount of the fines for removal of public street trees or private property trees in five years.

Community Input

On April 6, 2006, a community meeting was held in the City Council Chambers to solicit input and ideas from the public on how to reduce the number of illegal tree removals in San José. Residents, neighborhood leaders, and tree professionals from many areas of the City attended this meeting. Three key messages related to the illegal removal of trees were: 1) fines should be higher for first time offenders, incrementally higher for repeat offenders, and applied to companies, contractors, and other individuals who profit from the removal to provide a greater deterrence to illegal tree removals; 2) more education and outreach is needed to inform residents of the tree removal process; and 3) better response to complaints about illegal tree removals that are in process from DOT, Code Enforcement, and/or the Police Department during weekends and holidays is necessary.

Based on the feedback heard during the community meeting, and along with the review of other cities and past tree removal cases and data, staff has developed several changes to the current tree removal process, as well as strategies to increase community awareness of the tree removal process.

Recommended Changes to the Illegal Tree Removal Fines

It is recommended that fines for the illegal removal of a tree be increased in all cases; that fines between public and private illegal tree removals be standardized based on tree size; and that escalating fines be adopted to deal with multiple offenses within a three year period. Fines could be levied on any property owner, tree service company, contractor, hired worker, or other persons who are involved in the illegal removal of a tree, including, but not limited to, causing, permitting, aiding, abetting, arranging, or performing the illegal removal of a tree. The proposed fine structure is within the range of fines used by the Cities surveyed. The table below describes all of the tree sizes and their associated fines:

Illegal Tree Removal Fines				
Type of Tree	Current	Recommended Fines		
		First violation within a 3 year period	Second violation within 3 years of a previous violation	Third and subsequent violations within 3 years of two previous violations
Street Tree (less than 6" diameter)	\$300	\$500	\$1,000	\$1,500
Street Tree (between 6" and 11.99" in diameter)	\$350	\$750	\$1,500	\$2,500
Street Tree (between 12" and 17.99" in diameter)	\$400	\$1,000	\$2,000	\$3,000
Street tree (between 18" and 23.99" in diameter)	\$450	\$1,500	\$3,000	\$4,500
Private property tree (56" to 74.99" in circumference; approximately 18" to 24" in diameter)	\$500	\$1,500	\$3,000	\$4,500
Street tree (24" or greater in diameter)	\$500	\$2,000	\$4,000	\$6,000
Private Property tree (75" or greater in circumference; approximately 24" or greater in diameter)	\$500	\$2,000	\$4,000	\$6,000
Heritage Tree	\$5,000	\$10,000	\$20,000	\$30,000

Escalating fines would only be used when a violation occurs within three years of one or more previous violations. For all non-heritage trees, a fine would escalate based on the number of violations that have occurred during a three-year period by a single property owner, tree service company, contractor, hired worker or other persons. For example, if a tree company was to receive a citation for illegally removing a 12" tree and they were previously cited for removing two other trees, regardless of size, within the last three years, they would be fined \$3,000 (3 X \$1,000). Continued violations by any property owner, tree service company, contractor, hired worker, or other person would be referred to the Attorney's Office to pursue other remedies. The maximum fine for multiple removals of a heritage tree within a three-year period would be set at \$30,000 so not to exceed the proposed potential maximum civil penalty for removal or destruction of heritage trees. A three-year period condition for escalating a fine is recommended based on staff's ability to accurately track historical data and to avoid the appearance of unreasonable penalties for past wrongdoing.

In addition to a fine, any unlicensed company, contractor, or hired worker will be required to pay all applicable San José business license taxes, and all violations involving a contractor or company will be reported to the State Contractors Licensing Board.

Use of Additional Fine Revenue

Adopting the proposed changes to the fine structure is expected to generate additional revenues to the City. Based solely on the number of reported illegal tree removals in the City during FY 2004-2005, the City could see at least a 300% increase in annual revenues. This does not account for potential fines to tree service companies, contractors, or hired workers since fining these parties was not a previous practice and data are not available to project the level of such fines. In addition, previous annual revenues under the existing fine structure are inconsistent, and therefore the amount of the increased revenues under the proposed fine structure is difficult to project with any accuracy. Depending on behavioral changes on the part of the residents and the tree removal companies in response to the revised fines, the increase in revenue could be from \$30,000 to \$100,000.

In accordance with the Mayor's March Budget Message for Fiscal Year 2006-2007 approved by the City Council, staff recommends splitting the incremental increased fine revenues between Our City Forest and the City Arborist Office. Arborist staff will invest in technology to help collect and manage data that would improve web access to removal and inspection data. Staff is supportive of increasing funding to Our City Forest for their assistance in furthering public education and outreach on City tree policies, tree care, and urban forest advocacy, as further described in the following section. Specific recommendations for the use of potential additional funds for Our City Forest will be presented to the City Council in August.

Public Education and Outreach Regarding Tree Removals

Throughout the assessment and analysis of this issue and the development of this report, staff has found that one the most apparent problems with the tree removal process is the community's overall lack of knowledge of the process. In past cases, many of those cited for illegal removal of trees claimed to be unaware of the required permit process for tree removal. Community groups have

reiterated this in recent meetings with staff. Staff proposes a multi-pronged approach to address this issue.

Immediately enhance resident awareness of the tree removal process

An article will be written and included in the City's semi-annual newsletter to San José residents, which will be inserted in the garbage billing. Staff will also issue press releases to announce any changes in the fine structures and posting procedures as they are approved by the City Council, and will attempt to contact the known local companies that perform tree removal services to inform them of the changes. Information will also be shared with Neighborhood Development Centers in a further attempt to notify neighborhood groups and associations, and realtors will be provided with updated information to be disseminated to local homebuyers. These methods will be completed with existing resources and will not impact service levels.

Utilize Our City Forest to develop and implement education and outreach strategies

Our City Forest has invaluable knowledge and contacts to develop more effective education and outreach efforts. Assuming the new fine structure results in increased fine revenues, staff would look to secure half of the incremental increase, up to \$50,000, to help support outreach and education efforts such as proactive training and information materials to various communities in multiple languages and for tree care and removal companies, contractors, and workers. The amount of any additional grant funding planned for Our City Forest and any additional services requested will be detailed in the annual Our City Forest agreement, which is scheduled for City Council approval in August 2006.

On an ongoing basis, DOT and PBCE will continue to capitalize on every opportunity to communicate the City's policies, ordinances, and practices in regards to trees, including interactions with the local media, during discussions with residents at neighborhood meetings, and on the City website. There have been recent news stories written and broadcasted on the issue of illegal tree removals.

Increased Response to Complaints About Illegal Tree Removals in Progress

DOT and Code Enforcement are staffed to immediately respond to complaints about an illegal tree removal in progress during normal weekday working hours. Based on the feedback from the community, Code Enforcement has implemented a pilot program to include Saturday inspection services for immediate response to citizen complaints regarding unpermitted tree removals on public and private property. The effectiveness of this enhanced service will be evaluated in approximately six months. The San José Call Center will receive and coordinate these reports of illegal tree removals with the assigned inspection staff. During off-hours and Sundays, the Police Department will respond to these types of complaints.

Unfortunately, because of the nature of tree removals, staff response to complaints is not usually in time to prevent irreversible tree damage. Communities are urged to take pictures of the tree removal process in action because a picture that provides reasonable verification of the removed

tree's prior existence and size can be presented to the City as evidence to support the fine assessment and tree replacement process.

Public Tree Posting Period

The City of San José Arborist Office has also received concerns from constituents regarding the current process for posting removal notices, which is specified in Section 13.28.140 of the San José Municipal Code. Residents claim that the seven-day posting period is insufficient and does not allow residents a reasonable amount of time to object to the removal of a tree. Situations where residents are out of town for longer than seven days are often cited as a problem with the current posting period. Staff recommends that the posting period be increased from seven days to fourteen days. This will provide additional time for residents to observe the postings on the tree, observe the door hangers placed within 150 feet of the tree on both sides of the street, and file the appropriate objection in writing to the Arborist Office. In addition, staff will pursue the ability to post tree removal requests on the City's website as part of the technology improvements funded by the increased fine revenues. This would not result in any significant delays in the overall removal permit process.

ALTERNATIVES

City staff heard very strong community support for increasing administrative fines for the illegal removal of trees. Staff believes that the recommended fine structure appropriately penalizes first time and repeat violators, deters the illegal removal of trees, and considers the broader needs and priorities of the public, our neighborhoods, and the City. However, increasing the amount of any of the fines is an alternative that the council may consider.

PUBLIC OUTREACH

Staff submitted to the Rules Committee on November 9, 2005 a workload assessment for a comprehensive outreach effort involving the public, affected departments, and the tree care industry. At that meeting, staff was directed to and completed an expedited and limited case review and prepare a report focused on increasing the fines for illegal tree removals. Staff has also conducted community meetings and met with OCF and representatives of various tree removal companies. Further policy and operational enhancements will continue to be examined with appropriate stakeholders.

COORDINATION

This report was coordinated with the City Manager's Budget Office, the Police Department, and the City Attorney's Office.

05-15-06

Subject: **Illegal Tree Removal**

Page 8

COST IMPLICATIONS

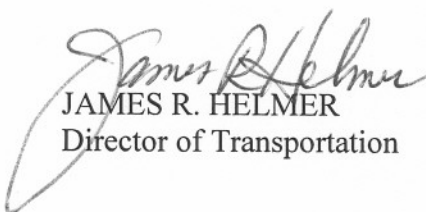
Not applicable

BUDGET REFERENCE


No applicable

CEQA

Not a project.



JAMES R. HELMER
Director of Transportation



JOSEPH HORWEDEL
Acting Director of Planning, Building and
Code Enforcement

For questions please contact Kevin O'Connor, Deputy Director, at 277-3028.

Attachment

ATTACHMENT 1

Comparison of Illegal Tree Removal Fines Among Local Cities

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